

International human rights instruments in domestic law



Why recommendations on Scotland?

The Scotland Act 1998 provided for the establishment of the Scottish Parliament and the Scottish Government. The Act sets out that all policy areas not explicitly reserved to the UK Parliament are devolved to the Scottish Parliament. The Scottish Parliament has full legislative powers over devolved matters. This means that issues such as justice, health and social care, education and training, as well as many aspects of transport and environment, are within the powers of the Scottish Parliament and responsibilities of the Scottish Government.

Observing and implementing international human rights obligations relating to devolved matters is the responsibility of both the Scottish Parliament and Scottish Government Ministers.

While the UK is the State Party to the United Nations (UN), UN bodies have increasingly recognised the value of specific concluding observations and recommendations for the Scottish Government. This has been recognised as a way to ensure that law, policy and practice in Scotland is fully compliant with all international human rights law and policy.

Issues

There has been no further progress on the ratification of outstanding international human rights treaties, and no progress on domestic enforceability of treaties that have been ratified (recommendations 110.1, 110.5, 110.15-20 and 110.26-295).



There are a number of outstanding judgments of the European Court of Human Rights to which there have been unacceptable delays in implementation.

The Scottish Government stated in the past that it was not supportive of wholesale incorporation or domestic enforceability of human rights treaties, citing lack of evidence as to the value of incorporation. The Scottish Government has made a commitment to work with partners in Scotland's National Action Plan for Human Rights (SNAP) and civil society to further explore the potential benefits of further incorporation. However, there has been little progress.

We welcome the Scottish Government's opposition to the UK Government's proposed repeal of the Human Rights Act (HRA) and its replacement with a British Bill of Rights. The Scottish Parliament has made clear that it would not provide legislative consent to such a proposal, should consent be sought.

The Scottish Parliament has the power to legislate for additional human rights protections for devolved matters. Doing so could mitigate some of the effects of repealing the HRA and secure greater protection of a wider range of human rights standards, particularly economic, social and cultural rights.

The Scottish and UK Governments have a generally positive record of implementing judgments of the European Court of Human Rights. However, there are also a number of outstanding judgments to which there have been unacceptable delays in implementation. These include the blanket ban on voting imposed automatically on convicted offenders serving their sentences (Hirst and Greens and MT). Decisions around prisoner voting are matters for the Scottish Parliament in relation to local government elections.

Recommendations



The UK retains the Human Rights Act 1998.



The UK and Scotland fully execute all outstanding judgments of the European Court of Human Rights.



The UK ratifies and incorporates all relevant human rights treaty standards without reservation, including individual communications procedures.



The UK and Scotland embed systematic monitoring and reporting of progress towards the full realisation of human rights and the Sustainable Development Goals into national monitoring frameworks.



Scotland strengthens the enforceability of international human rights treaties on devolved matters.



Both UK and Scottish Governments ensure there is no regression on equality and human rights law as a consequence of exiting the EU.



The Scottish Parliament increases its ability to act as a human rights guarantor.



Questions for the Government

What action is the Scottish Government taking to ensure that all social, economic and cultural rights are enforceable in Scots law, policy and practice?

Has the Scottish Government taken any steps to systematically integrate human rights and the Sustainable Development Goals into its national monitoring frameworks, including the National Performance Framework?

The Scottish Human Rights Commission is the National Human Rights Institution for Scotland, accredited with A status by the Global Alliance of NHRIs. SHRC is one of the three NHRIs in the UK. SHRC is a member of the UK's National Preventive Mechanism (OPCAT) and the Independent Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities in Scotland.

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